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Due Date: January 30, 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Matthias Eichstaedt et al.	Examiner:	Paul King
Serial No.:	09/092,791	Group Art Unit:	2756
Filed:	June 5, 1998	Docket:	AM9-98-023
Title:	CUSTOMIZABLE WEB FILLER FOR ALLEVIATION OF NETWORK LATENCY AND DELAY		

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

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By:_____
Name: George H. Gates

Commissioner for Patents
Washington, D.C. 20231

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Dear Sir:

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(PTO TRANSMITTAL - GENERAL)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Matthias Eichstaedt et al.	)
	)
Serial #: 09/092,791	) Examiner: P. King
	)
Filed: June 5, 1998	) Group Art Unit: 2756
	)
Title: CUSTOMIZABLE WEB FILLER FOR	) Appeal No. _____
ALLEVIATION OF NETWORK	)
LATENCY AND DELAY	)

BRIEF OF APPELLANTS

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In accordance with 37 CFR §1.192, Appellants hereby submit the Appellants' Brief on

Appeal (in triplicate) from the final rejection in the above-identified application, as set forth in the

Office Action dated November 16, 2000.

Please charge the amount of $310 to cover the required fee for filing this Appeal Brief as set

forth under 37 CFR §1.17(c) to Deposit Account No. 09-0441 of I.B.M. Corporation, the assignee

of the present application. Also, please charge any additional fees or credit any overpayments to

Deposit Account No. 09-0441.

I.   REAL PARTY IN INTEREST

The real party in interest is I.B.M. Corporation, the assignee of the present application.

II.   RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences for the above-referenced patent application.

III.   STATUS OF CLAIMS

Claims 1-13 and 15-39 remain in the application. All of these claims are shown in the Appendix attached to this Appeal Brief.

In the Office Action of November 16, 2000, claims 1-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,572,643 (Judson) in view of "Proactive Universal Resource Locators Lookup in Internet Web Browsers", IBM Technical Disclosure Bulletin, vol. 40, no. 9, September 1997, pp. 113-114; TDB0997.0041 (TDB) and further in view of U.S. Patent No. 5,864,611 (Ching).

IV.   STATUS OF AMENDMENTS

No amendments to the claims have been made subsequent to the final Office Action.

V.   SUMMARY OF THE INVENTION

Briefly, Appellants' invention, as recited in independent claims 1, 15, and 27, is generally directed to an invention that alleviates problems associated with delays in accessing data on a network. First, data is accessed on a network from a client computer. The invention then identifies when a sufficient delay occurs during the accessing of the data. Thereafter, the invention presents filler contents on the client computer during the identified sufficient delay, wherein the filler contents are customized to a user's taste. None of the cited references teach or suggest this combination of elements.

VI.   ISSUES PRESENTED FOR REVIEW

Whether claims 1-13 and 15-39 are unpatentable under 35 U.S.C. § 103(a) as being rendered obvious by U.S. Patent No. 5,572,643 (Judson) in view of "Proactive Universal Resource Locators Lookup in Internet Web Browsers", IBM Technical Disclosure Bulletin, vol. 40, no. 9, September 1997, pp. 113-114; TDB0997.0041 (TDB) and further in view of U.S. Patent No. 5,864,611 (Ching).

VII.   GROUPING OF CLAIMS

The rejected claims stand or fall together.

VIII.   ARGUMENTS

Judson describes a method of browsing the Worldwide Web of the Internet using an HTML-compliant client supporting a graphical user interface and a browser. The method begins as a web page is being displayed on the graphical user interface, the web page having at least one link to a hypertext document preferably located at a remote server. In response to the user clicking on the link, the link is activated by the browser to thereby request downloading of the hypertext document from the remote server to the graphical user interface of the client. While the client waits for a reply and/or as the hypertext document is being downloaded, the browser displays one or more different types of informational messages to the user. Such messages include, for example, advertisements, notices, messages, copyright information and the like.

The IBM TDB discloses a web browser wherein, while the user is reading a web page, the idle time is utilized by checking the web site URLs listed on the current web site to see if the user would encounter any problems if any of these links were followed.

Ching describes a method of a system and method for estimating the traffic rates of large traffic sources. This knowledge is then used for network management functions.

As noted by the Office Action, Judson does not disclose the Appellants' claimed limitations of identifying when a delay occurs during the accessing of the data, and presenting filler contents on the client computer during the identified delay. However, the Office Action states that the IBM TDB teaches a system which identifies possible problems associated with delays in web pages. Thus, the Office Action asserts that it would have been obvious to incorporate the method of identifying access delays taught by IBM TDB in the system of Judson in order to increase the efficiency of the system by selectively displaying filler contents to only those links with high latency.

Also as noted by the Office Action, Judson-IBM TDB does not disclose the Appellants' claimed limitations of identifying when a sufficient delay occurs during the accessing of the data, and presenting filler contents on the client computer during the identified delay. However, the Office Action states that Ching teaches network delays to a specific threshold. Thus, the Office Action

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asserts that it would have been obvious to incorporate the method of detecting sufficient delays as taught by Ching into the system of Judson-IBM TDB for the purpose of further increasing the efficiency of the system by enabling detection of the amount of delay and applying the filler data accordingly.

Appellants disagree. Even when combined, the references do not teach or suggest the Appellants' claimed invention.

For example, Judson merely describes that informational messages are always displayed while the client is waiting for a reply, regardless of whether a sufficient delay occurs during the accessing of data. The IBM TDB teaches that web site URLs should be checked while the user is reading a web page, not while the client is waiting for a reply to a previous request. Ching estimates traffic rates for a number of different reasons, such as (1) to balance calling loads among different databases within a network, or (2) to predict/manage mass calling events, or (3) to perform general network overload management, or (4) to reroute the traffic, or (5) to improve resource allotment decisions, but none of these stated reasons include presenting filler contents on the client computer during the identified sufficient delay.

Thus, the references actually teach away from the Appellants' invention because they both perform their specified actions without identifying a sufficient delay while the client is accessing data (i.e., between the request and the response), and they do not customize the information to the user's taste. Indeed, Judson apparently always assumes (1) that there will be sufficient delay in the client accessing data that informational messages can be displayed, and (2) that previously viewed information can guide the system in choosing information of interest to the user; the IBM TDB (1) waits until after the data has been accessed, while the user is reading the accessed data, to check URLs, and (2) cares nothing about the interests of the user; and Ching estimates traffic rates of large traffic sources for network management purposes, not for the use of individual users. In contrast to all these references, the Appellants' claimed invention presents filler content customized to a user's taste only when a sufficient delay has been identified during the accessing of the data. Consequently, the various elements of the Appellants' claimed invention together provide operational advantages over the systems disclosed in Judson, the IBM TDB, and Ching. In addition, Appellants' claimed invention solves problems not recognized by Judson, the IBM TDB, and Ching.

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Appellants submit that independent claims 1, 15, and 27, and hence all the claims dependent thereon, recite novel features which patentably distinguish over the Judson, the IBM TDB, and Ching references, either alone or in combination, under 35 U.S.C §§ 102 and 103. Moreover, dependent claims 2-13, 16-26, and 28-39 recite additional novel structures, functions and steps that are even more remote from the teachings of the Judson, the IBM TDB, and Ching references.

IX.　ARGUMENTS

In light of the above arguments, a decision by the Board of Patent Appeals and Interferences reversing the Examiner and directing allowance of the pending claims in the subject application is respectfully solicited.
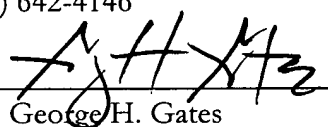
Respectfully submitted,

Matthias Eichstaedt et al.

By their attorneys,

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Dated: _1/22/01_

By:_____
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APPENDIX

1. (AMENDED) A method of alleviating problems associated with delays in accessing data on a network, comprising:

(a) accessing data on a network from a client computer;

(b) identifying when a sufficient delay occurs during the accessing step; and

(c) presenting filler contents on the client computer during the identified sufficient delay, wherein the filler contents are customized to a user's taste.

2. (UNCHANGED) The method of claim 1 above, wherein the filler contents are pre-selected.

3. (UNCHANGED) The method of claim 1 above, wherein the filler contents are selected from a group comprising text data, graphics data, audio data, and audiovisual data.

4. (UNCHANGED) The method of claim 1 above, wherein the filler contents are selected from a group comprising static filler contents and dynamic filler contents.

5. (TWICE AMENDED) The method of claim 1 above, further comprising automatically selecting the filler contents based on predetermined criteria.

6. (UNCHANGED) The method of claim 5 above, wherein the filler contents are selected based on the accessed data.

7. (UNCHANGED) The method of claim 1 above, wherein the filler contents are stored on the client computer.

8. (AMENDED) The method of claim 7 above, further comprising storing the filler contents in a repository on the client computer.

9. (UNCHANGED) The method of claim 1 above, wherein the filler contents are stored on a server computer connected to the network.

10. (TWICE AMENDED) The method of claim 9 above, further comprising retrieving the filler contents from the server computer connected to the network.

11. (AMENDED) The method of claim 1 above, wherein the identifying step is performed either at the client computer or at a server computer connected to the network.

12. (AMENDED) The method of claim 1 above, wherein the presenting step further comprises presenting the filler contents without interrupting the accessing of the data from the network.

13. (AMENDED) The method of claim 1 above, further comprising deactivating the presenting step when the accessing of the data on the network is complete.

14. (CANCELLED)

15. (AMENDED) An apparatus for alleviating problems associated with delays in accessing data on a network, comprising:

(a) a client computer connected to the network;

(b) a browser, executed by the client computer, for accessing data on the network; and

(c) a filler engine, executed by the client computer, for presenting filler contents on the client computer when a sufficient delay is identified in the accessing of the data on the network, wherein the filler contents are customized to a user's taste.

16. (AMENDED) The apparatus of claim 15 above, further comprising a content receiver for retrieving the filler contents from a server on the network.

17. (UNCHANGED) The apparatus of claim 16 above, wherein the filler engine requests the filler contents from the content receiver and the content receiver retrieves the filler contents from a server on the network for the filler engine.

18. (UNCHANGED) The apparatus of claim 15 above, further comprising a repository, stored on the client computer, for storing the filler contents.

19. (AMENDED) The apparatus of claim 18 above, further comprising a content receiver for retrieving the filler contents from a server on the network and for storing the retrieved filler contents in the repository.

20. (AMENDED) The apparatus of claim 19 above, wherein the filler engine further comprises means for retrieving the filler contents from the repository.

21. (AMENDED) The apparatus of claim 15 above, wherein the filler engine further comprises means for initiating use of the filler contents when appropriate.

22. (UNCHANGED) The apparatus of claim 15 above, wherein the filler engine is an extension to the browser.

23. (UNCHANGED) The apparatus of claim 15 above, wherein the filler engine is a component separate from the browser.

24. (UNCHANGED) The apparatus of claim 15 above, wherein the filler engine displays the filler contents without interrupting the accessing of the data from the network.

25. (UNCHANGED) The apparatus of claim 15 above, wherein the filler engine deactivates when the accessing of the data from the network is complete.

26. (UNCHANGED) The apparatus of claim 15 above, wherein a server on the network transmits the delay information through the browser to the filler engine and the filler engine retrieves the filler contents from the repository in response thereto.

27. (UNCHANGED) A computer program carrier readable by a computer and embodying one or more instructions that are executable by the computer to perform method steps for alleviating problems associated with delays in accessing data on a network, the method comprising:

(a) accessing data on a network from a client computer;

(b) identifying when a sufficient delay occurs during the accessing step; and

(c) presenting filler contents on the client computer during the identified sufficient delay, wherein the filler contents are customized to a user's taste.

28. (UNCHANGED) The computer program carrier of claim 27 above, wherein the filler contents are pre-selected.

29. (UNCHANGED) The computer program carrier of claim 27 above, wherein the filler contents are selected from a group comprising text data, graphics data, audio data, and audiovisual data.

30. (UNCHANGED) The computer program carrier of claim 27 above, wherein the filler contents are selected from a group comprising static filler contents and dynamic filler contents.

31. (AMENDED) The computer program carrier of claim 27 above, further comprising automatically selecting the filler contents based on predetermined criteria.

32. (UNCHANGED) The computer program carrier of claim 31 above, wherein the filler contents are selected based on the accessed data.

33. (UNCHANGED) The computer program carrier of claim 27 above, wherein the filler

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contents are stored on the client computer.

34. (UNCHANGED) The computer program carrier of claim 33 above, further comprising storing the filler contents in a repository on the client computer.

35. (UNCHANGED) The computer program carrier of claim 27 above, wherein the filler contents are stored on a server computer connected to the network.

36. (AMENDED) The computer program carrier of claim 35 above, further comprising retrieving the filler contents from the server computer connected to the network.

37. (UNCHANGED) The computer program carrier of claim 27 above, wherein the identifying step is performed either at the client computer or at a server computer connected to the network

38. (UNCHANGED) The computer program carrier of claim 27 above, wherein the presenting step further comprises presenting the filler contents without interrupting the accessing of the data from the network.

39. (UNCHANGED) The computer program carrier of claim 27 above, further comprising deactivating the presenting step when the accessing of the data on the network is complete.